

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DEVELOPERS SURETY AND INDEMNITY COMPANY, <i>Plaintiff,</i> v. MEGA CONSTRUCTION CORPORATION OF NEW JERSEY, INC., et al., <i>Defendants.</i>	CIVIL ACTION NO. 2:15-cv-4729-MMB
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ORDER RE: MOTION FOR RECONSIDERATION

AND NOW, this 12th day of April, 2023, for the reasons stated in the foregoing Memorandum, it is hereby **ORDERED** that Plaintiff's Motion for Reconsideration (ECF No. 71) is **GRANTED** in part as follows:

1. Partial summary judgment is granted for Plaintiff as to the issue of whether Defendants are liable as indemnitors under the Indemnity Agreement for legal expenses incurred by Plaintiff consistent with the terms of the Indemnity Agreement.
2. Summary judgment is denied as to Defendants' legal defense of bad faith.
3. Defendants may establish at trial that any of Plaintiff's legal expenses were bad faith disbursements, which would vitiate liability under Fallon Electric Company v. Cincinnati Insurance Company, 121 F.3d. 125, (3d Cir. 1997).

BY THE COURT:

/s/ **MICHAEL M. BAYLSON**

MICHAEL M. BAYLSON, U.S.D.J.